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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,353	01/25/2007	John David Hines	2818.3510002	1920

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STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.  
1100 NEW YORK AVENUE, N.W.  
WASHINGTON, DC 20005

EXAMINER
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VARNUM, RYAN A

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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11/30/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/579,353	Applicant(s) HINES ET AL.	
	Examiner RYAN A. VARNUM	Art Unit 3751	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6 and 8-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6 and 8-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/12/2009</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

1. This office action is responsive to the amendment filed on 9/4/2009. As directed by the amendment: claims 1 and 2 have been amended, claims 3 and 7 have been cancelled and claims 8-15 have been added. Thus, claims 1, 2 4-6 and 8-15 are presently pending in this application.

### ***Claim Objections***

2. Claim 9 is objected to due to the following informalities: the claim language recites "an actuator that for actuating" (Lines 1-2), it appears that the term "that", should be deleted from this language. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 4-6, 8-10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harlan (US Patent 5,505,041) in view of Zhen (WIPO Publication WO 97/12027).

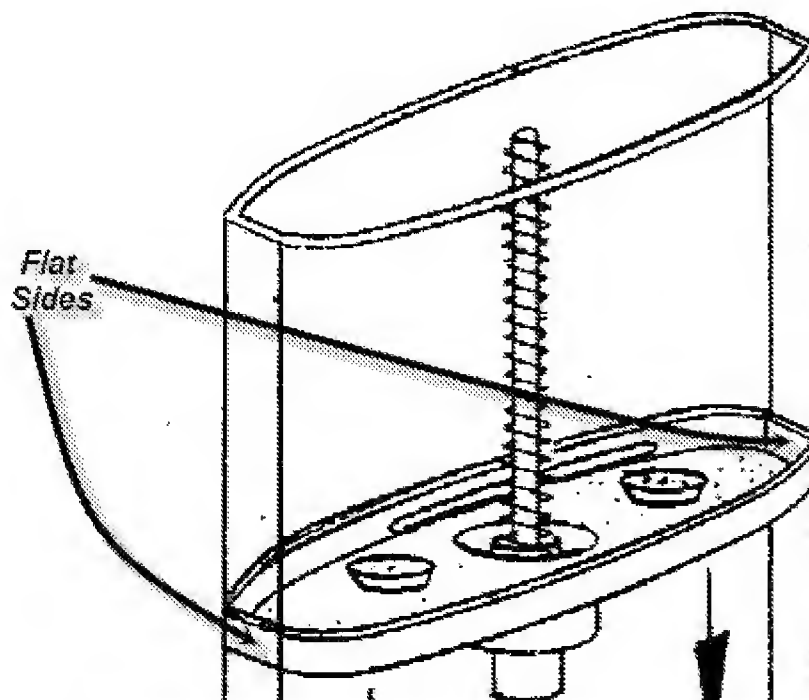
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5. In re Claim 1, Harlan discloses a dispensing device comprising: a reservoir 28 ("cavity"; Fig. 10; Column 3, line 31) containing a coating substance 46 ("stick form"; Fig. 11; Column 4, Lines 5-6) one dispensing orifice 27 ("open top"; Fig. 10; Column 3, Line 30) in fluid communication with the reservoir (See Fig. 10) a movable platform 36 (Fig. 10; Column 3, Line 41) movable by means of a telescopic screw mechanism wherein the telescopic screw mechanism comprises first and second threaded shafts 51/29 ("support shaft" and "mold screw"; Fig.'s 5, 9 and 10; Column 4, Line 12 and Column 3, Line 32) connected together (See Fig. 10), wherein rotation of the screw mechanism advances the movable platform against the stored coating substance thereby dispensing a metered dose of the cleaning fluid from the reservoir, and wherein the reservoir and the moveable platform are non-circular in cross section to resist rotation of the platform relative to the reservoir (See Fig. 10).

6. Although Harlan does not disclose the specific coating substance, attention is directed to Zhen which teaches a shear-thinning fabric cleaning liquid (Abstract) having viscosity profile such that from rest and up to an applied shear stress of 10 Pa the viscosity of the fluid is at least 100 Pa.s (Page 3, Lines 24-25) and under a shear field of  $20 \text{ s}^{-1}$  of at most 5 Pa.s (Page 3, Lines 22-24). Accordingly, it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to modify the device of Harlan, such that the device carried such a coating substance, as taught by Zhen, for the purpose of providing the applicator device with a heavy duty laundry detergent capable of suspending particles therein (Abstract).

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7. In re Claims 2 and 4-6, Harlan further discloses the platform 36 (Fig. 10) comprises a base portion of the reservoir 28 (See Fig. 10) and sliding the platform 36 (Fig. 10) within the reservoir progressively reduces the volume of the reservoir thereby forcing the fluid to exit the reservoir (Column 4, Lines 40-43); the cross section of the reservoir and platform include at least one non-curved section (See Annotated Partial Fig. 10 below); the reservoir is uniform in cross section at least along the length in which the platform moves (See Fig. 10); and the platform is configured for reciprocal generally axial movement internally of the reservoir (Column 2, Lines 5-15).



**Annotated Partial Fig. 10**

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8. In re Claims 8, 9 and 15, Harlan further discloses the first shaft 51 (Fig.'s 5 and 9) and second shafts 29 (Fig. 10) are connected together by respective internal and external threads on the first and second shafts (Fig.'s 9-10; Column 3, Line 32 and Column 4, Line 12); an actuator 87 ("hand wheel"; Fig. 21; Column 5, Line 60) for actuating the telescopic screw mechanism (Column 5, Lines 60-63), wherein the actuator forms a base portion of the device (See Fig. 21); wherein the first 51 (Fig.'s 5 and 9) is fixed to the platform 36 (See Fig.' 5 and 9) and the second shaft 29 (Fig. 10) is fixed to a part of the device that is constrained (Column 3, Lines 32-41) to prevent movement with the platform when the platform advances against the stored fabric cleaning fluid.

9. In re Claim 10, Harlan further discloses the platform 36 (Fig. 10) comprises a peripheral edge 50 ("side walls"; Fig. 9) configured to slide in a sealing relationship with an inner surface of the reservoir (Column 4, Lines 10-12). Although Harlan does not expressly state that the peripheral edge is flexible, it is the examiner's opinion that it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the platform of a material having a flexible characteristic, for the purpose of further facilitating the sealing connection of the platform with the reservoir walls, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. This is especially true in this instance where Harlan discloses that such dispensing devices are commonly constructed of plastic (Column 1, Lines 16-17).

10. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harlan in view of Zhen, as applied to Claim 1 above, further in view of Losier et al. (US Patent 6,336,763).

11. In re Claim 11, although Harlan does not disclose a scrubbing member, attention is directed to Losier which teaches a dispensing device comprising a reservoir, a moveable platform, moveable by a screw mechanism, and a scrubbing member 20 ("insert"; Fig.'s 1 and 3; Column 6, Lines 41-49) fixed over a top wall 12 ("upper portion"; Fig. 1; Column 6, Line 42) of the reservoir 10 ("container"; Fig. 1; Column 6, Line 42) adjacent the dispensing orifice (See Fig. 1), for the purpose of providing a dispensing device having an applicator surface which will prevent significant post-extrusion of the substance therein (Column 2, Lines 55-58).

12. Accordingly, it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to modify the device of Harlan by including a scrubbing member fixed over a top wall of the reservoir adjacent the one or more dispensing orifices, as taught by Losier, for the purpose of providing a dispensing device having an applicator surface which will prevent significant post-extrusion of the substance therein.

13. In re Claims 12-14, Losier further discloses the scrubbing member 20 (Fig.'s 1 and 3) comprises a coarse mesh structure 26 ("mesh fabric"; Column 6, Line 54 and Column 8, Line 6) formed of high density polyethylene (Column 8, Lines 6-10); wherein the apertures of the mesh provide multiple dispensing orifices (Column 8, Lines 10-14);

and the reservoir 10 (Fig. 1) further comprises a removable end piece 20 (Fig.'s 1 and 3) that forms a top of the reservoir (See Fig. 1), the one or more orifices being located in the end piece (Column 8, Lines 10-14).

### ***Response to Arguments***

14. Applicant's arguments filed 9/4/2009 have been fully considered but they are not persuasive.

15. Applicant has argued that the reference of Harlan discloses a telescopic screw mechanism only in the embodiment disclosed in regard to Fig. 22; and that the embodiments disclosed in regard to the remaining figures, which the Examiner has relied upon, do not disclose a "telescopic" screw mechanism. The Examiner respectfully disagrees.

16. It is the Examiner's position that the embodiment of the dispenser disclosed by Harlan, upon which the Examiner had relied, fairly discloses a "telescopic" screw mechanism, to the extent that such structure operates in a manner whereby a first member slides within a second member to cause the advancement of such first member; and the structure reads on Applicant's claimed structure for a "telescopic" screw mechanism as provided in the currently amended Claim 1.

17. Should Applicant feel that the "telescopic" screw member contemplated in their device differs from that which is disclosed in the referenced embodiment of the Harlan

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reference, then it is recommended that Applicant provide further limitations to more distinctly define such “telescopic” screw member in the claims.

### ***Conclusion***

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN A. VARNUM whose telephone number is (571) 270-7853. The examiner can normally be reached on Monday - Friday, 9:00 AM - 5:00 PM EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. A. V./  
Examiner, Art Unit 3751

/David J. Walczak/

Primary Examiner, Art Unit 3751